

Congress of the United States
Washington, DC 20515

October 14, 2021

The Honorable Martin J. Walsh
Secretary
Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Secretary Walsh:

We are conducting oversight of the Biden Administration’s announced COVID-19 vaccine-and-testing mandate on American employees and employers. On September 9, 2021—in an unprecedented action—President Biden announced that he had authorized the U.S. Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA) to promulgate and enforce a mandatory vaccine-and-testing emergency temporary standard (ETS) covering all private employers of 100 or more employees.¹ This rule will cover roughly 80 million American workers.² President Biden’s authoritarian mandate imposes troubling and probably illegal constraints on American businesses and their employees. It is just the latest example of President Biden and his Administration breaking promises and making decisions with no thought towards implementation or real-world impacts.³

On December 5, 2020, then President-elect Biden promised vaccines would not be required.⁴ Later, on May 14, 2021, White House Press Secretary Jen Psaki said “[the Biden Administration] [is] not currently considering federal mandates.”⁵ And on July 29, 2021, when asked about the federal government requiring vaccines for all Americans, White House COVID-19 Response Coordinator Jeff Zients said “[n]o. That’s not an authority that we’re exploring at all.”⁶ Yet only a few weeks later, President Biden did an about-face, abruptly announcing a national vaccine-and-testing mandate—a mandate never before imposed on employers or the American workforce.

¹ Exec. Order No. 14043, 86 Fed. Reg. 50989 (Sept. 9, 2021); Exec. Order No. 14042, 86 Fed. Reg. 50985 (Sept. 9, 2021).

² See Julia Zorthian, *Labor Department Officials Frustrated with White House over COVID-19 Vaccine-and-Testing Mandate*, TIME (Sept. 27, 2021) (“*Labor Department Officials Frustrated with White House*”).

³ See e.g., Erin Banco, et al., *Tensions mount between CDC and Biden health team over boosters*, POLITICO, Sept. 13, 2021.

⁴ *Joe Biden: Covid vaccination in US will not be mandatory*, BBC NEWS (Dec. 5, 2020).

⁵ The White House, Press Briefing, *Press Briefing by Press Secretary Jen Psaki and Chair of the Council of Economic Advisers Cecilia Rouse, May 14, 2021* (May 14, 2021), available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/05/14/press-briefing-by-press-secretary-jen-psaki-and-chair-of-the-council-of-economic-advisers-cecilia-rouse-may-14-2021/>.

⁶ *The Situation Room*, CNN (July 29, 2021), available at <https://transcripts.cnn.com/show/sitroom/date/2021-07-29/segment/01>.

Although the Biden Administration claims it was prepared for the emergence of the Delta variant of the COVID-19 virus,⁷ it appears to have had no coherent plan for response to such a development. The sudden announcement of the vaccine-and-testing mandate demonstrates the Administration's unpreparedness. And in the wake of the announcement, the list of questions is endless. Not all American employers have the luxury to wait for answers. They have been blind-sided by the President's mandate.⁸ Some are laying off workers based on vaccine refusals.⁹ Making matters worse, non-compliance with the mandate could cause employers to confront fines of \$136,532 per violation under existing law¹⁰—and legislation pending in Congress proposes to raise the level of fines to \$700,000 per violation.¹¹ Moreover, the nation's small businesses continue to face severe labor force issues and cannot find workers for open positions. Concerns over the vaccine-and-testing mandate's logistics and potential for business- and job-destroying fines are valid.

The legality of the President's private-sector vaccine-and-testing mandate is also highly questionable. OSHA does have limited authority to issue ETSs to impose emergency workplace requirements. But it is doubtful this authority includes the power to mandate that private-sector employees take vaccine injections into their bodies—as opposed to the power to require practices limited in their effect to the workplace.¹² It also remains to be seen whether an ETS as strict as that described by the President can be justified as “necessary,” consistent with 29 U.S.C. § 655(c)(1)—as opposed to a more flexible standard that would, for example, fully account for what is needed to protect those who already have natural immunity to COVID-19. Further, OSHA does not appear to have the wherewithal to enforce the President's private-sector vaccine-and-testing mandate.¹³

To help our Committees understand the Biden Administration's plans to implement its vaccine-and-testing ETS for the private sector, we request the following documents and information as soon as possible but no later than October 28, 2021, for the time period January 20, 2021, to the present, unless otherwise noted below.

1. All documents and communications referring or relating to OSHA regulations or guidance to American employees and employers for the surveying of employee vaccination and testing status.

⁷ The White House, Press Release, *FACT SHEET: President Biden to Announce New Actions to Get More Americans Vaccinated and Slow the Spread of the Delta Variant* (July 29, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>.

⁸ Zachary Halaschak, *Biden's vaccine mandate spells confusion and worry for some employers*, YAHOO! NEWS, Sept. 16, 2021.

⁹ Leslie Josephs, *Nearly 600 United Airlines employees face termination for failing to comply with vaccine mandate*, CNBC, Sept. 28, 2021; *United Airlines Begins Terminating Hundreds Of Unvaccinated Employees*, CBS SF BAY AREA, Sept. 29, 2021.

¹⁰ Memorandum to Regional Administrators from Patrick Kapust, Acting Dir., Directorate of Enforcement Programs, U.S. Dept of Labor (Jan. 8, 2021), available at <https://www.osha.gov/memos/2021-01-08/2021-annual-adjustments-osh-civil-penalties>.

¹¹ See 29 U.S.C. subsec. 666(a); H. Rep. 117-130, Book 2, *Build Back Better Act: Report of the Committee on the Budget, House of Representatives* at 1579 (sec. 21004) (Sept. 27, 2021).

¹² 29 U.S.C. subsec. 655(c).

¹³ David Shepardson, *Biden vaccine mandate will test OSHA, U.S. workplace regulator*, Reuters (Sept. 13, 2021).

2. All documents and communications referring or relating to COVID-19 testing options for American employees and employers who will be subject to the vaccine-and-testing mandate.
3. All documents and communications referring or relating to costs to American employees and employers to implement and enforce the planned vaccine-and-testing mandate.
4. All documents and communications regarding the federal government's internal analysis and assessments of the economic impacts of the planned vaccine-and-testing mandate on American employees and employers.
5. All documents and communications referring or relating to time-off requirements for employees who will be subject to the planned vaccine-and-testing mandate.
6. All documents and communications referring or relating to telework requirements for employees who will be subject to the vaccine-and-testing mandate.
7. All documents and communications referring or relating to OSHA guidance for employer-employee communications regarding the planned vaccine-and-testing mandate.
8. All documents and communications referring or relating to religious, medical, natural-immunity-based, or other possible exemptions for employees from the planned vaccine-and-testing mandate.
9. All documents and communications referring or relating to OSHA guidance on written compliance plans which American employers may adopt with regard to the planned vaccine-and-testing mandate.
10. All documents and communications referring or relating to DOL's resources and budgetary needs to enforce the planned vaccine-and-testing mandate.
11. All communications between or among DOL employees and White House employees referring or relating to the design, implementation or enforcement of the planned vaccine-and-testing mandate or alternatives to it.
12. All communications between or among DOL employees referring or relating to the design, implementation or enforcement of the planned vaccine-and-testing mandate or alternatives to it.
13. All communications between or among DOL employees and Office of Information and Regulatory Affairs employees referring or relating to the design, implementation or enforcement of the planned vaccine-and-testing mandate or alternatives to it.

The Honorable Martin J. Walsh

October 14, 2021

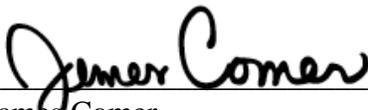
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14. All documents and communications between or among DOL employees and White House or Department of Justice employees concerning the legality of issuing a vaccine-and-testing mandate through an ETS under the *Occupational Safety and Health Act*.

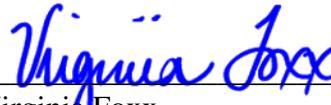
Thank you for your attention to this important request. To make arrangements for document delivery, or to ask any related follow up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074, Committee on Education and Labor Republican Staff at (202) 225-4527 or the Small Business Committee Republican Staff at (202) 225-5821.

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee on Education and Labor has authority over labor standards, including workplace safety. Additionally, under the same House Rule, the Committee on Small Business shall have the authority to “study and investigate on a continuing basis the problems of all types of small business.” Thank you in advance for your cooperation with this inquiry.

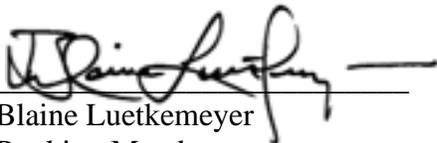
Sincerely,



James Comer
Ranking Member
House Committee on Oversight
and Reform



Virginia Foxx
Ranking Member
House Committee on Education
and Labor



Blaine Luetkemeyer
Ranking Member
Committee on Small Business

cc: The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Robert C. Scott, Chairman
Committee on Education and Labor

The Honorable Nydia M. Velázquez, Chairwoman
Committee on Small Business